

Adopted	Rejected
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COMMITTEE REPORT

YES:	9
NO:	0

MR. SPEAKER:

*Your Committee on Courts and Criminal Code, to which was referred Senate Bill 374, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill **be amended** as follows:*

- 1 Page 1, between the enacting clause and line 1, begin a new
- 2 paragraph and insert:
- 3 "SECTION 1. IC 35-38-1-10.5 IS AMENDED TO READ AS
- 4 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 10.5. (a) The court:
- 5 (1) shall order that a person undergo a screening test for the
- 6 human immunodeficiency virus (HIV) if the person is:
- 7 (+) (A) convicted of a sex crime listed in section 7.1(e) of
- 8 this chapter and the crime created an epidemiologically
- 9 demonstrated risk of transmission of the human
- 10 immunodeficiency virus (HIV) as described in section
- 11 7.1(b)(8) of this chapter; or
- 12 (2) (B) convicted of an offense related to controlled
- 13 substances listed in section 7.1(f) of this chapter and the
- 14 offense involved the conditions described in section
- 15 7.1(b)(9)(A) of this chapter; **and**
- 16 (2) **may order that a person undergo a screening test for the**

human immunodeficiency virus (HIV) if the court has made a finding of probable cause after a hearing under section 10.7 of this chapter.

(b) If the screening test required by this section indicates the presence of antibodies to HIV, the court shall order the person to undergo a confirmatory test.

(c) If the confirmatory test confirms the presence of the HIV antibodies, the court shall report the results to the state department of health and require a probation officer to conduct a presentence investigation to:

(1) obtain the medical record of the convicted person from the state department of health under IC 16-41-8-1(a)(3); and

(2) determine whether the convicted person had received risk counseling that included information on the behavior that facilitates the transmission of HIV.

(d) A person who, in good faith:

(1) makes a report required to be made under this section; or

(2) testifies in a judicial proceeding on matters arising from the report;

is immune from both civil and criminal liability due to the offering of that report or testimony.

(e) The privileged communication between a husband and wife or between a health care provider and the health care provider's patient is not a ground for excluding information required under this section.

(f) A mental health service provider (as defined in IC 34-4-12.4-1) who discloses information that must be disclosed to comply with this section is immune from civil and criminal liability under Indiana statutes that protect patient privacy and confidentiality.

SECTION 2. IC 35-38-1-10.6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 10.6. (a) The state department of health shall notify victims of the crimes listed in section 7.1(e) and 7.1(f) of this chapter if tests conducted under section 10.5 **or section 10.7** of this chapter confirm **that** the person ~~who committed the crime tested~~ had antibodies for the human immunodeficiency virus (HIV).

(b) The state department of health shall provide counseling to persons notified under this section.

SECTION 3. IC 35-38-1-10.7 IS ADDED TO THE INDIANA

CODE AS A NEW SECTION TO READ AS FOLLOWS
[EFFECTIVE JULY 1, 1998]: **Sec. 10.7. (a) Upon:**

(1) written request made to a prosecuting attorney by an
alleged victim of a sex offense listed in section 7.1(e) of this
chapter; and

(2) after a hearing held under this section, a court entering
a finding that there is probable cause to believe the alleged
victim is a victim of a sex offense listed in section 7.1(e) of
this chapter that was committed by the defendant;

the court may order an individual named as defendant in the
prosecution of the offense to undergo a screening test for human
immunodeficiency virus (HIV).

(b) Before issuing an order for testing under subsection (a), the
court shall conduct a hearing at which both the alleged victim and
the defendant have the right to be present. Both the alleged victim
and the defendant must be notified of:

(1) the date, time, and location of the hearing; and

(2) their right to be present at the hearing.

(c) During the hearing only affidavits, counteraffidavits, and
medical records that relate to the material facts of the case used to
support or rebut a finding of probable cause to believe the alleged
victim was exposed to human immunodeficiency virus (HIV) as a
result of the alleged sex offense may be admissible.

(d) The written request of the alleged victim made under
subsection (a) must be filed by the prosecuting attorney with the
court and sealed by a court.

(e) The requirements of section 10.5 of this chapter apply to
testing ordered by a court under this section.

(f) If the defendant has not been convicted, the results of a test
conducted under this section shall be kept confidential. The results
may not be made available to any person or public or private
agency other than the following:

(1) The defendant and the defendant's counsel.

(2) The prosecuting attorney.

(3) The department of correction.

(4) The victim and the victim's counsel.

(g) A victim may disclose the results of a test to an individual
or organization to protect the health and safety of or to seek

- 1 **compensation for:**
2 **(1) the victim;**
3 **(2) the victim's sexual partner; or**
4 **(3) the victim's family.**
5 **(h) A person that knowingly or intentionally:**
6 **(1) receives notification or disclosure of the results of a test**
7 **under this section; and**
8 **(2) discloses the results of the test in violation of this section;**
9 **commits a Class B misdemeanor."**
10 Renumber all SECTIONS consecutively.
 (Reference is to SB 374 as printed January 30, 1998.)

and when so amended that said bill do pass.

Representative Dvorak